

*Joe
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and three original*

JK

~~Agreement for Maria Medina Draft 8/17/99~~

SPONSORSHIP AGREEMENT

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This agreement (the "Agreement") is made as of August ~~26~~, 1999 by and between the City of Chicago, Illinois, a municipal corporation and a home rule government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois (the "City"), acting by and through its Mayor's Office of Special Events ("Special Events"), and Philip Morris Incorporated, a Virginia corporation with executive offices located at 120 Park Avenue, New York, New York 10017 ("Philip Morris").

RECITALS

WHEREAS, the City intends to produce an event known as The Chicago Jazz Festival (the "Event") from September 2, 1999 through September 5, 1999; and

WHEREAS, Philip Morris desires to purchase certain ~~advertising and promotional~~ rights relating to the Event for \$25,000 and certain other valuable consideration as described herein; and

WHEREAS, the City desires to sell such ~~advertising and promotional~~ rights and provide certain other benefits to Philip Morris as described herein;

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

*in connection with
PR Community
Celebration*

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SECTION 1. THE ABOVE RECITALS ARE EXPRESSLY INCORPORATED IN AND MADE A PART OF THE AGREEMENT.

SECTION 2. Philip Morris' Obligations.

2.01 Philip Morris shall make payable to the City, fund number 356, the sum of \$25,000 as a sponsorship fee (the "Fee"). ^{Full Sponsorship} ~~Fifty percent of the Fee shall be due and payable upon the earlier~~ ^{late}

~~of (i) thirty days after the complete execution of the Agreement and the submission of an invoice~~

~~(ii) ten days prior to the Event.~~ The remaining fifty percent of the Fee shall be due and payable

within ten days after the completion of the Event and submission of an invoice. Payments shall be

delivered to Special Events, Attention: Accounting. Failure to make such payments as provided

may result in the prohibition of Philip Morris from participating in the Event.

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lead
to
lead
insert
Beget
Name generator
Smiley or
Alan for
Kurt*

~~2.02 [Please confirm] Philip Morris shall, within ten days after submission of the Agreement, submit a written plan of its promotional activities prior to and during the Event, both on-site and off-site, for approval by the Executive Director of Special Events (the "Executive Director"), which approval shall not be unreasonably withheld (the "Written Plan"). Philip Morris shall obtain the prior written approval of the Executive Director for any changes, additions or deletions to the Written Plan, which approval shall not be unreasonably withheld.~~ ^{no}

2.03 Philip Morris shall cooperate with the City and with other sponsors of the Event in the promotion of the Event.

~~2.04 Philip Morris shall, within ten days after the execution of the Agreement, and thereafter as requested by the City, provide the City with the corporate logo of Philip Morris, including, but not limited to, black and white, color, PMS color designations and size variations.~~ ^{removed}

for what?

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2.05 Philip Morris shall park vehicles at the Event only in the areas designated by the City. All Sponsor vehicles must display a valid permit issued by Special Events in the vehicle's front windshield.

SECTION 3. The City's Obligations.

The City's obligations are set forth in this Section 3 and in Exhibit A, which is attached hereto and made a part hereof.

3.01 The City shall designate Philip Morris as Participating Sponsor of the Event.

3.02 The City shall provide Philip Morris with the signage rights set forth in Exhibit B.

3.03 The City shall use its reasonable efforts to include the Philip Morris name, or, at Philip Morris' request, Philip Morris' designated logo, in advertising placed in connection with the Event.

3.04 The City shall provide Philip Morris reasonable opportunities for on-site promotion during the Event in accordance with the Written Plan.

SECTION 4. Special Provisions.

4.01 The parties agree that the monies and goods provided by Philip Morris pursuant to Section 2 herein represent the fair market value for the rights and other benefits granted by the City under Section 3 herein.

4.02 Philip Morris warrants, represents and covenants to the City that:

- (a) Philip Morris has no, and shall have no, interest in or discretion over the content, production or location of all or any part of the Event, other than that which is expressly set forth herein.
- (b) Philip Morris has the corporate power and authority to enter into and perform its obligations under the Agreement, and the Agreement has been duly authorized, validly executed by persons signing on behalf of Philip Morris and delivered by Philip Morris.

- (c) Philip Morris and its officials are not in arrears with respect to any fines, taxes or licensing fees imposed by and owed to the City.
- (d) Philip Morris is not in violation of Section 2-92-320 of the Municipal Code of Chicago which prohibits award of a contract to a party who has been convicted or admitted to an act of bribery. Ineligibility continues for three years following such conviction or admission.

4.03 Nothing herein contained is intended or should be construed as in any way creating or establishing the relationship of partners or joint venturers between the City and Philip Morris, or as constituting Philip Morris or any officer, owner, employee or agent of Philip Morris as an agent, representative or employee of the City for any purpose or in any manner whatsoever or as constituting the City or any officer, employee or agent of the City as an agent, representative or employee of Philip Morris.

4.04 Philip Morris shall procure and maintain at all times, at Philip Morris' own expense, during the term of the Agreement (and afterward if Philip Morris is required to return and perform additional services at the site of the Event, for any reason whatsoever), the types of insurance specified below, with insurance companies authorized to do business in the State of Illinois covering all operations under the Agreement, whether performed by Philip Morris or by subcontractors of Philip Morris. The kinds and amounts of insurance required are as follows:

Risk
Cheryl
Please confirm
4.04

(a) **Workers' Compensation and Employers Liability ~~[Please confirm]~~**

Workers' Compensation and Employers Liability Insurance, as prescribed by applicable law covering all employees who are to provide a service under the Agreement and Employers liability coverage with limits of not less than \$100,000 for each accident or illness.

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b) **Commercial General Liability (Primary and Umbrella)**~~[Please confirm]~~

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence, for bodily injury, personal injury, and property damage liability.

Coverage extensions shall include the following: All premises and operations, products/completed operations, separation of insureds, defense and contractual liability (with no limitation endorsement). The City and the Chicago Park District are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from Philip Morris' work performed at the Event.

c) **Automobile Liability (Primary and Umbrella)**~~[Please confirm]~~

When any motor vehicles (owned, non-owned and hired) are used in connection with Philip Morris' services to be performed at the Event, Philip Morris shall provide Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence, for bodily injury and property damage.

d) **Property**~~[Please confirm]~~

Philip Morris shall be responsible for all loss or damage to personal property (including, but not limited to, material, equipment, tools and supplies), owned or rented, by Philip Morris.

e) **Self-Insurance**~~[Please confirm]~~

To the extent permitted by law, Philip Morris may self-insure for the insurance requirements specified above, it being expressly understood and agreed that, if Philip Morris does self-insure for the above insurance requirements, Philip Morris shall bear all risk of loss for any loss that would otherwise be covered by insurance policies, and the self-insurance program shall comply with at least the insurance requirements as stipulated above. This provision 4.04 (e) controls anything to the contrary in Section 4.04. Philip

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Morris will furnish to the City of Chicago, Mayor's Office of Special Events, Accounting Department, Room 703, 121 North LaSalle Street 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of the Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of the Agreement. Philip Morris shall submit evidence of insurance on the City of Chicago Insurance Certificate of Coverage Form (copy attached) prior to the execution of the Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Philip Morris shall not be deemed a waiver by the City. Philip Morris shall advise all insurers of the Agreement's provisions regarding insurance. Non-conforming insurance shall not relieve Philip Morris of its obligation to provide the insurance specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to terminate the Agreement until proper evidence of insurance is provided. The insurance shall provide for thirty days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed. Philip Morris shall require all subcontractors of Philip Morris to carry the insurance required herein, or Philip Morris may provide the coverage for any or all subcontractors of Philip Morris, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles and self-insured retentions on referenced insurance coverages shall be borne by Philip Morris. Philip Morris expressly understands and agrees that any insurance or self-insurance programs maintained by the City shall apply in excess

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of and not contribute to insurance provided by Philip Morris under the Agreement. The insurance required to be carried shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. If Philip Morris, or its subcontractors, desire additional coverage, higher limits of liability, or other modifications for its own protection, Philip Morris and each of its subcontractors, shall be responsible for the acquisition and cost of such additional protection. The City's Risk Management Department maintains the right to modify, delete, alter or change these requirements. Insurers shall waive their rights of subrogation against the City, its employees, elected officials, agents or representatives and the Chicago Park District. The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. If Philip Morris, or its subcontractors, desire additional coverages, Philip Morris and each subcontractor, shall be responsible for the acquisition and cost of such additional protection. Philip Morris expressly understands and agrees that any coverages and limits furnished by Philip Morris shall in no way limit Philip Morris' liabilities and responsibilities specified within the Agreement documents or by law. Philip Morris expressly understands and agrees that any insurance or self-insurance programs maintained by the City shall apply in excess of and not contribute with insurance provided by Philip Morris under the Agreement. The City of Chicago, Risk Management Department maintains the right to modify, delete, alter or change these requirements at its sole discretion.

4.05 Notwithstanding any other terms and conditions stated herein, including any obligations regarding insurance coverage, Philip Morris agrees to defend, indemnify, keep, save and

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hold harmless the City, its agents, officials and employees against all claims, suits or judgments, costs or expenses, including reasonable attorneys' fees, caused by or resulting from any error, omission, negligence or any other act of Philip Morris arising from the Agreement or its participation in the Event, except and solely to the extent that such may be based on or the result of any error, omission, or negligence of the City.

SECTION 5. Events of Default and Remedies.

5.01 Any material failure by either party to perform or carry out its obligations under the Agreement shall constitute an event of default.

5.02 Any event of default by one party that continues without cure, or without a good faith effort to cure, for three days after the receipt of notice as provided in Section 6.18 shall excuse the other party from performing its obligations under the Agreement, automatically and without further notice in addition to all other remedies available by law.

5.03 No remedy hereunder is intended to be exclusive of any other remedy, but each and every remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power nor shall it be construed to be a waiver of any event of default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

5.04 If the Event is canceled, or not authorized by the Chicago City Council for any year of the Agreement, the City may terminate the Agreement, or any portion hereof, at any time by notice in writing to Philip Morris. In addition, the Agreement, or any portion hereof, may be terminated without notice in the event of threat to the public health or safety as may be determined in the sole discretion of federal, state or local officials charged with making such determinations. In

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the event the Agreement is terminated pursuant to this Section, Philip Morris' sole remedy is that the City shall return to Philip Morris any payments made hereunder that have not been expended, but only to the extent reasonable and permissible by law or in equity.

5.05 Any obligations and liabilities contractually assumed by the City under the Agreement are subject to, and conditioned on, the appropriation of sufficient funds. Non-appropriation of funds shall be deemed to occur when the Chicago City Council fails to appropriate sufficient funds for any fiscal year. In the event of non-appropriation, the Agreement shall automatically terminate on the earliest of the end of the fiscal year for which funds were appropriated or when the appropriated funds are exhausted.

5.06 In no event shall the City be liable to Philip Morris for loss of profits or for indirect, special, incidental or consequential damages arising out of or related to the Event or the Agreement.

SECTION 6. General Provisions.

6.01 The Agreement and the exhibits attached hereto constitute the entire agreement between the parties, and no other warranties, inducements, considerations, promises or interpretations shall be implied or impressed upon the Agreement that are not expressly addressed herein.

6.02 The Agreement is comprised of several identical counterparts, each to be fully executed by the parties and each to be deemed an original having identical legal effect.

6.03 No changes, amendments, modifications, cancellation or discharge of the Agreement, or any part hereof, shall be valid unless in writing and signed by the parties hereto except as provided for in Sections 5.04 and 5.05.

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6.04 Philip Morris shall not assign, transfer, pledge, surrender or otherwise encumber or dispose of the Agreement or any rights and privileges created hereby, or any interest in any portion of the same, without the prior written consent of the City. The City reserves the right to assign all or any part of its interest in the Agreement.

6.05 All of the terms and provisions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, transferees and assigns, if any.

6.06 No member of the governing body of the City or other unit of its government, and no other officer, employee or agent of the City or other unit of its government who exercises any decision-making authority with regard to the Agreement or any governmental functions or responsibilities in relation to the production of the Event, shall have any personal financial interest, direct or indirect, in the Agreement. No member of or delegate to the Congress of the United States, or the Illinois General Assembly and no Alderman or City employee shall be admitted to share any part of the Agreement or to any financial benefit to arise herefrom.

6.07 No member, official or employee of the City shall be personally liable to Philip Morris or any successor in interest in the event of any default or breach by the City, or for any amount that may become due to Philip Morris or its successor in interest, or on any obligation under the terms of the Agreement.

6.08 Philip Morris and the City shall, in their performance of their respective obligations pursuant to the Agreement, comply with all applicable federal, state and local laws, ordinances, rules, regulations and executive orders, including, but not limited to, the requirements of: the State of Illinois Criminal Code, 720 ILCS 5/33E; Chapter 2-154 of the Municipal Code of the City of Chicago (Ethics), and 15 U.S.C. §§ 1331 et seq. and of the Master Settlement

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Agreement executed as of November 23, 1998, by certain tobacco manufacturers and the Settling States (as defined in the Master Settlement Agreement).

In connection herewith, Philip Morris has executed the Disclosure Affidavit for Sponsors attached hereto and incorporated herein by reference.

6.09 Philip Morris warrants and represents that it will make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390.

6.10 Philip Morris and all officers, directors, agents, partners and employees thereof shall cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code of the City of Chicago. Philip Morris understands and will abide by all provisions of Chapter 2-56.

6.11 The Agreement shall be governed in accordance with the internal laws of the State of Illinois.

6.12 Any headings of the Agreement are for convenience of reference only and do not define or limit the provisions hereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural and vice versa, unless the context shall otherwise indicate. All references to any exhibit or document shall be deemed to include all supplements or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of the Agreement.

6.13 If any provision of the Agreement shall be held or deemed to be or shall in fact be illegal, invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or

of any logo, including PM cigarettes
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jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering any other provisions of the Agreement inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections contained in the Agreement shall not affect the remaining portions of the Agreement or any part hereof.

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~~6.14 The City will have no right, title or interest in the brand names owned by Philip Morris, the slogans, designs or logo-types associated with Philip Morris' products, except a limited right to use pursuant to the Agreement. All use is subject to the advance approval of Philip Morris.~~

Philip Morris, will have no right, title or interest in the Event name, or the slogans, designs or logo-types associated with the Event, except a limited right to use pursuant to the Agreement.

6.15 If at any time the City is contacted by a third party, including the media, other than as contemplated by the terms of the Agreement, concerning the City's activities on behalf of Philip Morris, the City will immediately notify Philip Morris of the third party contact.

6.16 If any federal, state, municipal or local law, regulation, ordinance, order, ruling, judgment, consent decree or other governmental action becomes effective that makes the promotion of tobacco products as contemplated by the Agreement unlawful or impracticable or, in the judgment of Philip Morris, materially reduces the value of the Agreement to Philip Morris, the Agreement may be terminated by Philip Morris as of the date that the law, regulation, ordinance, order, ruling, judgment, consent decree or action becomes effective, and the City will refund to Philip Morris all amounts paid to the City by Philip Morris hereunder during the term of the Agreement to the extent not yet expended by the City. If the Agreement is so terminated, the City may deduct from the refund all fees earned for services satisfactorily performed and documented

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nonrecoverable costs properly incurred by the City on behalf of Philip Morris. The City will immediately deliver documentation for all such fees or costs deducted.

6.17 The City will not enter into sponsorship agreements with any other manufacturer of cigarettes or other tobacco products, or permit any signage or commercial identification of any other cigarettes or other tobacco products or tobacco product branded incentive items, in connection with the Event, without the prior written consent of Philip Morris.

6.18 Notices provided for herein, unless expressly provided for otherwise in the Agreement, shall be in writing and may be delivered personally or by placing any such notice in the United States Mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

IF TO THE CITY:

Mayor's Office of Special Events
City Hall, Room 703
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Executive Director

With copies to:
Law Department
City Hall, Room 610
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Corporation Counsel

IF TO PHILIP MORRIS:

Philip Morris Incorporated
120 Park Avenue
New York, NY 10017
Attention: ~~Yvette Robinson~~ Jose Fontanez *Jose Fontanez*

Notices delivered by mail shall be deemed effective two days after mailing. Notices personally delivered shall be deemed effective upon receipt.

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IN WITNESS WHEREOF, the parties have caused the Agreement to be signed as of the date first written above.

City of Chicago

City Comptroller

Executive Director
Mayor's Office of Special Events

Approved as to form and
legality:

Assistant Corporation Counsel

SPONSOR:

Philip Morris Incorporated

BY: _____

ATTEST:

BY: _____
(Its Secretary)

(Corporate Seal)

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EXHIBIT A

CITY OBLIGATIONS

1. Philip Morris as Participating Sponsor on brochures and 50% of the ads relating to the Event. *Reviewed*
2. Philip Morris stage mentions (100%) at the Side Stage. *cut*
3. Three kiosks, to be provided by Philip Morris, ~~for the distribution of incentive items~~ at locations throughout the Event site to be mutually agreed upon by the parties. *?*
4. Fifty VIP seats for each night of the Event at the Main Stage (Petrillo Bandshell).
5. One half-page advertisement approved in advance by Philip Morris in the Event program book. *cut*

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EXHIBIT B
SIGNAGE SPECIFICATIONS

*Must agree upon by
both parties*

All on-site signage, including banners, at the Event, shall be subject to the City's right to: (a) determine the signage's design, including size, and its location at the Event; and (b) reject any on-site signage which the City in its sole discretion deems to be in poor taste, unsuitable or inappropriate to the nature of the Event.

Signage opportunities are as follows: (Costs for such signage shall be borne by each of the parties as indicated.)

Signage Costs

s= sponsor pays signage costs
c= city pays signage costs

Side Stage:

- Side stage backdrop
12' x 3' [s]
- Side stage sound tower
8' x 8' [s]
- Side stage mix tower
8' x 8' [s]
- Main stage railing
10' x 3' [s]

*Removal
no stage
signage*

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